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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant Serial No.: 10/631,341
Filing Date: July 30, 2003
Applicant(s): OLSTEIN, et al.

Group Art Unit: 1655
Examiner: Bin Shen
Atty Docket no.: 21001.009

Title: **ANTIBIOTIC-METAL COMPLEXES IN THE DETECTION OF GRAM-POSITIVE BACTERIA AND OTHER BIOLOGICAL ANALYTES**

RESTRICTION RESPONSE AND ELECTION OF SPECIES

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

To the Commissioner:

Responsive to the restriction and election of species requirement dated June 26, 2006, the time period for response being set to expire July 26, 2006 Applicants provisionally elect, with traverse, Group I, Claims 1-11, drawn to a complex. For an election of species, Applicants elect, with traverse, vancomycin as the antibiotic, cobalt as the metal, and Listeria as the microorganism. Claims 1-3, 5, 6, 10, and 11 read upon the elected species.

REMARKS

Restriction is proper only if the restricted claims are independent or patentably distinct and there is no serious burden placed on the Examiner if restriction is not required (MPEP §803). The burden is on the Examiner to provide reasons and/or examples to support any conclusion of patentable distinctness between the restricted claims (MPEP §803). Applicant respectfully traverses the restriction requirement on the grounds that the Office has not carried the burden of providing any reasons and/or examples to support the conclusion that the claims of the restricted groups are, in fact, distinct.

The Office has characterized the relationship between Groups I and III as product and process of use. Citing MPEP §806.05(h), the Examiner states that claims in this